

Message Text

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ACTION L-02

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E.O. 11652: N/A

TAGS: PFOR, CFED, SZ (JUDICIAL ASSISTANCE TREATY)

SUBJECT: U.S. - SWISS TREATY ON MUTUAL ASSISTANCE

REF: A) STATE 033248; B) BERN 0768

1. DR. KURT MARKEES HAS NOW INFORMED EMBOFF THAT, CONTRARY TO HIS INITIAL ESTIMATES, ONLY 10 SWISS CANTONS HAVE REPEAT HAVE LEGISLATION WHICH REQUIRE SWEARING TO OR AFFIRMING TESTIMONY AND PROVIDE SANCTIONS FOR FAILURE TO COMPLY. THEY ARE: BASEL STADT, BASEL LAND, LUCERNE, GLARUS, FRIBOURG, NEUCHATEL, VALAIS, ST. GALLER, GENEVA AND TICINO.

2. TO ASSIST U.S. NEGOTIATING TEAM IN ADDRESSING THIS QUESTION, DR. MARKEES WAS ASKED WHAT HE CONSIDERED MIGHT BE THE PRACTICAL PROBLEMS TO SWISS AUTHORITIES IN COMPLYING WITH U.S. REQUESTS UNDER ARTICLE 12. MARKEES STATED THAT MOST WITNESSES WHO WERE INFORMED OF THEIR AFFIRMATIVE OBLIGATION UNDER THE TREATY WOULD MOST LIKELY COMPLY. IT WAS ALSO NOTED THAT ALL SWISS CANTONS PROVIDE PENAL SANCTIONS FOR WITNESSES WHO GIVE FALSE TESTIMONY. TREATY ARTICLE 10 CLEARLY TRANSMITS THESE SANCTIONS TO WITNESSES GIVING TESTIMONY IN CONNECTION WITH JUDICIAL ASSISTANCE UNDER THE TREATY. IT MAY BE VALIDLY CONCLUDED THAT THE WITNESS WHO HAS GIVEN TRUTHFUL TESTIMONY SHOULD NOT BE RELUCTANT TO SWEAR TO OR AFFIRM

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IT OR IF HE HAS NOT TESTIFIED TRUTHFULLY HE HAS ALREADY

SUBJECTED HIMSELF TO SANCTIONS MORE SERIOUS THAN THOSE FOR REFUSAL TO SWEAR TO OR AFFIRM. IN ANY EVENT, IT IS DR. MARKEES' STATED OPINION THAT PRACTICAL PROBLEMS IN THIS REGARD ARE NEGLIGIBLE.

3. IN ANSWER TO EMBOFF'S OBSERVATION THAT THAT ENTIRE QUESTION RAISED BY SWISS IMPLEMENTING ARTICLE 26.2 APPEARS INCONSISTENT WITH THE MANDATORY LANGUAGE OF THE FIRST SENTENCE OF PARA 1 ARTICLE 10 OF JAT, DR. MARKEES STATED THAT THIS ONE RESERVATION BY THE SWISS WAS DISCUSSED IN DETAIL DURING ONE OF THE WASHINGTON NEGOTIATING SESSIONS. IT DOES NOT APPEAR THAT SWISS ARE IN A POSITION TO PROVIDE ANY MORE CONCRETE ASSURANCES IN THIS REGARD. WE HOPE THAT THE NEGOTIATING TEAM CAN LIVE WITH THE SITUATION AND MOVE FORWARD WITH THE RATIFICATION PROCESS. ON FEB 18, A COMMISSION OF THE SWISS UPPER HOUSE UNANIMOUSLY APPROVED TREATY. IT IS EXPECTED THAT FINAL RATIFICATION ACTION WILL BE COMPLETED IN JUNE OR JULY 1975.
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